TBTC
Tularosa Basin Telephone Co., Inc.

Charles M. Ferrell
Vice President
General Manager

December 18, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW Room 222
Washington, DC 20554

Dear Mr. Caton:

Enclosed are the original and four copies of the comments of Tularosa Basin Telephone Company, Inc. in response to the Commission's Public Notice in CC Docket 96-45 (Reference DA No. 96-1891) released November 8, 1996.

Also enclosed is one copy of our comments to be stamped and returned in the enclosed self addressed stamped envelope.

Any questions regarding this filing may be directed to me at (719) 594-5800.

Sincerely,

Douglas J Wagner

Douglas J. Wagner
President

cc: International Transcription Service
2100 M Street N.W.
Room 140
Washington, DC 20037

Sheryl Todd (Diskette)
Common Carrier Bureau
2100 M Street N.W.
Room 8611
Washington DC 20554

Encl.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMMENTS OF TULAROSA BASIN TELEPHONE COMPANY

Introduction

Tularosa Basin Telephone Company (TBTC) is a recently formed rural LEC consisting of three exchanges previously served by US WEST Communications in rural New Mexico. We began providing service to approximately 4,000 subscribers in August 1996. At the time we assumed ownership, all of our customers were served from inadequate outside plant facilities.

Network Improvements

We are planning substantial infrastructure upgrades which will be necessary in order to provide quality telecommunications service to our subscribers. Our actual costs are far more reflective of the investment necessary to serve those customers located in our service territory than any proxy model ever could. The upgrades modernize existing digital switching by installing a new host switch. The upgrades also will allow us to eliminate multiparty lines, replace antiquated outside plant facilities, and provide access to enhanced services. All of these upgrades are necessary in order to comply with the Telecommunications Act of 1996 and the tentative definition of universal service contained in the Joint Board Recommendations.[1]

Impact of Joint Board Recommendations

The Joint Board Recommendations (Recommendations), if adopted, will cause substantial changes in our future revenue streams seriously impacting our ability to complete the upgrades which we hope to accomplish. The Recommendations fail to provide TBTC with sufficient and predictable revenue streams which are necessary to serve our customers located in areas where it would otherwise be uneconomic to provide service. If the Recommendations are adopted without significant modification, we may be forced to modify our planned construction due to lack of construction funds and our inability to recover our investment without substantial and unsustainable local rate increases.

The proxy methodology endorsed in the Recommendations will not provide proper incentives to TBTC to provide quality service in high cost service territories. Instead, due to serious financial concerns, we will find it necessary to invest just enough to maintain minimum standards of service. We will also find it necessary to require substantially greater construction contributions from end users requesting new service connections. Do not mistake our statements of concern as a lack of desire to bring quality service to our rural customers. TBTC was formed with that intention and continues to

[1] CC Docket No. 96-45 Released November 8, 1996 at Paragraph 46.

look for the most efficient ways to accomplish our service goals under difficult geographic and economic conditions. Financial limitations are the only reason that service quality will not be improved in portions of the TBTC service territory.

The universal service system finally adopted must recognize that, without predictable cost recovery and profit potential, rural companies such as TBTC will be unable to achieve universal service goals. Prudent management will not build facilities, lenders will withhold loans due to inadequate security, and stockholders will resist costly expansion if such expansion does not promise the possibility of a return on investment. In areas such as those TBTC serves, assurances are needed that financial support will be available which will provide a reasonable opportunity to recover the actual cost of investment. Commenters have expressed concern that the use of actual cost in determining USF payments encourages gold plating. There is no significant evidence of gold plating and to the contrary, overwhelming evidence of rural telephone companies prudently bringing quality services to their customers at reasonable rates. All of our construction has been accomplished based on efficient engineering designs and competitive bidding in order to assure the most cost effective infrastructure possible.

Calculation of Universal Service Fund Support

The use of the proxy models, as is presently being considered, will not encourage investment in the infrastructure necessary to provide telecommunications services in rural, high cost areas. This fundamental problem with the Joint Board Recommendation endangers the availability of quality telecommunications service in rural America. We disagree with those commenters who assert that the use of embedded costs will not promote competitive neutrality.[2] Our construction program is the least cost, most technologically efficient design we could develop. Our lenders will only agree to continue financing and our stockholders only agree to invest provided there is a reasonable opportunity to recover and earn on these actual investments. Utilizing the embedded costs of an incumbent LEC is a perfectly logical and acceptable alternative to the use of theoretical proxy models, particularly if the incumbent LEC is the only authorized Eligible Carrier.

We propose that, in those rural areas served by a single Eligible Carrier, support continue to be based on actual costs incurred by the Eligible Carrier. We also support a requirement that the initial Eligible Carrier transition to proxies following the authorization of an additional Eligible Carrier by the responsible state commission. Such a requirement will place control in the hands of the state regulators who will be most familiar with the specific situation and the needs of the telecommunications customers.

Such a methodology based on embedded costs will minimize the undesirable effect that proxy models will create of allowing windfall profits for those companies who face little or no competition and whose actual cost of service is below the amount estimated by the proxies. It also minimizes the potential problem of not providing sufficient revenues for those companies whose costs are greater than that estimated by the proxies.

[2] CC Docket No. 96-45 Released November 8, 1996 at Paragraph 212.

Proxy costs will not result in Predictable and Sufficient Revenue Streams

The Recommended Decision states that "it is vital that the Commission use forward-looking economic costs as the basis for determining support levels. If support is based on embedded costs for the long-run, then incumbents and new entrants alike will receive incorrect signals about where they should invest."[3] We disagree with this conclusion. In order for this conclusion to be correct, it must be assumed that the proxy utilized is an unchanging, perfect predictor of future costs. This is simply not possible. A proxy calculation will become outdated almost as soon as it is released as technology changes and the definition of universal service is reexamined. Regardless of whether proxies or actual embedded costs are utilized, the cost figure utilized will be a constantly evolving and changing target. The conclusion that support based on embedded costs could jeopardize the provision of universal service is false.

All profit oriented companies, regardless of industry, must have the opportunity to establish rates which are sufficient to recover actual costs incurred and still achieve a profit. In a competitive market, investments will only be made if there can be a reasonable assumption that the stockholders will earn a positive return. If the customer chooses not to buy at the price established by the company, the company will find it necessary to adjust rates or reduce costs. If it is unsuccessful in adjusting rates in a way which will allow recovery of actual costs, the business may fail. In a competitive market,

[3] CC Docket No. 96-45 Released November 8, 1996 at Paragraph 275.

only those companies successful in establishing prices which recover historic embedded cost will be successful.

The Recommendation should be modified so that Eligible Carriers can rely on the receipt of universal service support funds for the economic life of the plant installed without concern that universal service support may vary widely from year to year. Unless this modification is made, Eligible Carriers will not be able to rely on continued support and the fund will not be sufficiently "predictable" to justify major investments in infrastructure.

The fallacy of using any Proxy model to determine funding levels is the failure to require the Eligible Carrier to actually utilize those funds in the provision of quality services. As long as actual funds are paid to Eligible Carriers without a corresponding requirement to actually invest, carriers in high cost areas will only invest an amount sufficient to maintain universal service funding eligibility. This fallacy may be in violation of the Act which states that, "A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[4]

Rural Carrier Proxy Phase In

Although we disagree with the Recommendation that proxies be utilized, we support the concept of a rural carrier proxy phase in (assuming proxies are adopted). However, as recommended, the phase in cannot be utilized by TBTC since we do not

[4] Telecommunications Act of 1996, Section 254 (e).

have any historical data on which to calculate a frozen amount per loop. This situation is clearly unacceptable to TBTC.

We also strongly disagree with the Recommendation that the phase in amounts be based on historical frozen costs rather than actual costs. The phase in should be based on actual cost incurred during the phase in period rather than establishment of a frozen amount per loop based on historical costs as has been proposed. Establishing a frozen amount as recommended can be disastrous for a company such as TBTC which plans substantial plant upgrade projects in a short period of time.

Because TBTC only began operations in 1996, the proposed phase in based on frozen historical costs is not an option for TBTC. We will have no alternative other than an immediate conversion to the untested, undefined proxy methodology. Since the proxy model which will be utilized has not yet been determined, and will not be determined for several months, TBTC may be unable to proceed with planned construction while waiting to determine future revenue streams. This situation certainly does not provide TBTC, as an Eligible Carrier, a "predictable" revenue stream as required by the Telecommunications Act of 1996. Our financial concerns emphasize how critical it is to maintain universal service support payments based on actual investment for high cost rural companies if the cause of universal service is to be maintained and advanced.

Appropriate Use of Proxy Models

As stated, TBTC does not favor the use of proxy models in determining actual payments to Eligible Carriers in those situations where only one Eligible Carrier exists in a geographic area. Rather, we recommend the continued use of actual cost incurred by the Eligible Carrier. This recommendation will avoid the improper investment signals proxy based payments will cause.

Funding High Cost Support

TBTC has serious concerns regarding the funding of the universal service system. As a telecommunications provider, TBTC also will have funding responsibilities. Rural LECs, such as TBTC already face severe economic challenges. Care must be taken to design a system which will not further increase the financial load on rural customers in achieving sufficient funding. As stated by Commissioner Chong, "Let us make no mistake about who will foot the bill for this universal service program. It is not the telecommunications carriers, but the users of telecommunications services to whom these costs will be passed through in a competitive marketplace."[5] Long Distance carriers, in response to competitive pressures, may attempt to pass their funding responsibilities through to end users on a flat rate basis in order to keep usage charges low. This would be advantageous to long distance carriers attempting to remain competitive in the usage sensitive toll market at the expense of low volume residential toll users, particularly those low volume users located in areas where high costs already exist. If appropriate safeguards are not implemented restricting the amount of flat rate end user charges which can be charged, the cost of funding universal service may result in unaffordable flat rate

[5] Separate Statement of Rachelle B. Chong.

pricing to residential customers. Maximum end user flat rate charges by long distance carriers should be established.

The Recommendation that contributions be based on a carrier's gross telecommunications revenues net of payments to other carriers unfairly places an excessive funding requirement on LECs to the advantage of long distance carriers. In order to avoid disparate treatment of LECs and long distance companies, and to spread funding over the broadest base of telecommunications services possible, TBTC likely will find it necessary to charge access customers as well as local service customers in order to recover funding costs. As long as LECs have universal service obligations, regulators have an obligation to provide an opportunity to recover reasonable costs of doing business. The funding of the universal service fund is certainly a reasonable cost of doing business and should be treated as such. Extreme care must be taken by the Commission to formulate policies which will result in the cost of funding being spread across a broad base of telecommunications services and not weighted unfairly to the local service user.

Limit Support to One Residential Connection at a Principle Residence

The Joint Board recommends that support be limited to (1) a single connection at a subscriber's principle residence, (2) a reduced amount for a single connection at a business, and (3) no support whatsoever for multiline businesses or vacation homes. We object to this limitation. These selective qualifications for funding will force rural companies serving high cost areas to engineer facility upgrades based substantially on the level of USF support which will be available rather than designs which most efficiently make available enhanced services to rural customers. Ultimately, this will degrade the service quality in rural areas.

Determination of Eligible Carriers

We support the Recommended Decision restricting eligibility to those carriers that utilize their own facilities in total or in combination with another carriers facilities. Carriers providing service based strictly on resale should not be eligible for Universal Service funding. The Recommendation is not clear regarding whether this requirement is on a "per service area basis," or a "per connection basis." The restriction should be clarified so that the determination is made on a per connection basis, not a service area basis. Carriers reselling a retail service should not be eligible for support. Qualification should only occur when a specific customer's service is provided by an Eligible Carrier's own facilities or a combination of an Eligible Carrier's own facilities and resold network elements obtained from another carrier. This clarification will eliminate the possibility of an Eligible Carrier providing a retail service (which has incorporated universal service funding in its retail price) at a wholesale rate to a competitor that then becomes eligible for universal service funding.

Service Areas Served by Rural Telephone Companies

TBTC strongly supports the Recommendation that the Commission utilize the current study areas of rural telephone companies as the service areas of Eligible Carriers, thereby requiring competitors to serve the entire study area in order to be an eligible carrier in areas served by small rural telephone companies. This is a positive step in ensuring that "cream skimming" is minimized in rural areas. This action will not eliminate the cream skimming which may occur in rural areas where the new competitive carrier chooses to serve a smaller area than the incumbent's study area and not qualify as an Eligible Carrier. This possibility reinforces the need to provide "sufficient" support to Eligible Carriers serving high cost rural areas so an Eligible Carrier is not forced to internally subsidize the service provided to its most rural customers.

Concerns with State Jurisdiction Issues

The effort to explicitly identify all implicit subsidies in response to the Act (both interstate and intrastate) will have as yet unidentified financial consequences in the intrastate jurisdictions. These consequences will manifest themselves most dramatically in rural, economically disadvantaged states such as New Mexico which have small populations and high infrastructure costs. Funding will be more difficult to recover through rates than in more urban areas without causing significant end user rate impacts. It appears that the Joint Board Recommendation assumes that as long as the federal universal service fund replaces existing interstate universal service funds and all existing interstate implicit subsidies, states should be responsible for any additional explicit funding which is necessary to accomplish a similar result for intrastate services. This is not what was intended in the Act and could have serious implications for universal service in New Mexico. Provided the state has not adopted additional definitions and standards to preserve and advance universal service within the state beyond that adopted by the Commission,[6] the Commission has the continued responsibility to establish sufficient and predictable funding necessary to keep rates affordable based on the definition of universal service it adopts. This federal responsibility is highlighted in the Joint Board's Recommendation;

> "The federal Universal Service Fund will ensure that telephone rates are within the means of the average subscriber in all areas of the country, thus providing a foundation on which the states can build to develop programs tailored to their individual needs."[7]

Even with interstate support, states will find it necessary to develop universal service funding mechanisms which are complementary to that adopted by the Commission. Many states presently have extremely high implicit subsidies which, in conjunction with existing federal revenue sources, allows local service rates to remain reasonable and affordable. If intrastate end user surcharges necessary to replace implicit state subsidies become substantial, it may become necessary to revisit the amount of funding available from the federal universal service fund in order to maintain affordable local telephone rates as required by the Act.

The Act envisions the federal and state jurisdictions working together. It may be necessary for the Commission to devise procedures where high cost rural states can obtain additional federal funding when necessary to maintain affordable rates when eliminating implicit subsidies.

Summary

---

[6] Telecommunications Act of 1996, Section 254 (f).

[7] CC Docket No. 96-45 Released November 8, 1996 at Paragraph 818 quoting from CC Docket No. 80-286, Decision and Order, 96 F.C.C. 781, 795 (February 15, 1984).

TBTC serves some of the most sparsely populated areas in the country. Without continued revenue support which is sufficient and predictable, we fear that we will be unable to offer the level of service quality our subscribers expect and deserve. We urge the Commission to adopt rules which, above all other goals, continues the proud tradition of universal service which now exists in the United States.

Respectfully Submitted

Tularosa Basin Telephone Company Inc.

By: Douglas J. Wagner

Douglas J. Wagner

President
402 Higuera St.
Tularosa, NM 88352-0068

December 19, 1996